the temporal suture. In his opinion injuries (2) and (3) had caused internal brain damage which in the ordinary course of nature would have caused death and death would have followed a few minutes after the injuries. Professor Chao also said that when the deceased was on fire he was still active and that 40% of his total body surface was burnt and such extent of burn would be sufficient in the ordinary course of nature to cause death.

On the evidence the learned trial judges found it was the 2nd Appellant who inflicted the fatal blow on the deceased's head, and that there was common intention of both the Appellants to cause injuries to the deceased which in the ordinary course of nature would cause death. They said, at pages 28 – 29:

"Admittedly, the second accused might not have had the intention to cause hurt to the deceased even up to the time when the lorry stopped at the track off East Coast Parkway but when he chased and caught the deceased, that was when he formed the intention to join the first accused to cause hurt to the deceased. What followed clearly established that common intention. After the second accused caught the deceased the first accused came and grabbed hold of the deceased by the neck from behind. Then the second accused hit the deceased on the head with the rake which the first accused had handed to him. Together they then set the deceased on fire."

Before us Mr. Subhas Anandan on behalf of the 1st Appellant proceeded on only one ground of appeal, namely, the absence of common intention to cause injuries sufficient in the ordinary course of nature to cause death, and expressly abandoned all the other grounds of appeal and in particular the contention that the statement made by the 1st Appellant under section 121(6) of the Criminal Procedure Code was not admissible on the ground that it was not made voluntarily. He argued that the learned trial judges found that it was the 2nd Appellant, who inflicted the fatal blow on the deceased, and at that time no common intention had been formed by the Appellants. He conceded, however, that at the time the 2nd Appellant poured petrol on the deceased both of them formed the common intention but at that time the deceased was already dead.

We were unable to accept this argument. On the evidence before the learned trial judges it could hardly be said that both the Appellants at the time or immediately before the fatal blow was inflicted did not have the common intention to cause injuries to the deceased which in the ordinary course of nature would cause death. Further, the evidence also showed that the deceased was still alive when the 2nd Appellant poured petrol on the deceased and the 1st Appellant set fire on the deceased.

Mr. Pala Krishnan on behalf of the 2nd Appellant did not really proceed with his argument on the appeal; he also abandoned the contention that the statement made by the 2nd Appellant under section 121(6) of the Criminal Procedure Code was not admissible on the ground that it was not voluntary. Nor did he dispute the finding of the learned trial judges that the 2nd Appellant inflicted the fatal blow. So far as the 2nd Appellant is concerned the absence of a common intention was immaterial as he was the one who inflicted the injuries which caused the death of the deceased, and on the evidence there was nothing which could be usefully urged on his behalf.

We therefore dismissed the appeal and affirmed the convictions of both the Appellants.

Appeal dismissed.

Solicitors: *M.P.D. Nair & Co.; Selvadurai Pala Krishnan & Partners.*

THAM YEW HENG & ANOR. v. CHONG TOH CHENG

[O.C.J. (Thean J.) December 19, 1984]
[Singapore – Suit No. 2295 of 1982]

Tort – Negligence – Contributory negligence – Road accident – Brain damage to boy aged 9 – Quantum of damages.

Damages – Brain injury – Boy aged 9.

The 1st plaintiff, a nine-year old boy at the time of the accident, brought this action by his mother, the 2nd plaintiff, against the defendant for damages for personal injuries sustained by the plaintiff as a result of the negligent driving of a motorcar by the defendant on August 4, 1979. The plaintiff, while crossing a road, was knocked down by the defendant's car.

The plaintiff suffered severe brain damage. After the accident he was admitted to the Alexandra Hospital and later transferred to Tan Tock Seng Hospital. He was unconscious for 3 days, and was unable to speak for 1 week. He sustained a fracture of the right maxilla and a laceration of the right cheek. A right periorbital hematoma was noted as well as a swelling over the right maxillary region. He was discharged from hospital on August 29, 1979. Dr Michael H.L. Yap, a neurologist, was of opinion that after a lapse of about 5 years since the accident, the 1st plaintiff's improvement, if any, would not be significant. Dr. Nei I-Ping, a consultant neurologist, concluded that the 1st plaintiff had

deteriorated in his school performance owing to the severity of his head injury. His improvement was likely to be minimal.

Held: (1) the defendant was solely to blame for the accident;

(2) a total sum of $86,500 for general damages was awarded to the 1st plaintiff: $35,000 was awarded for the permanent brain injury and $3,500 for the fractured maxilla and laceration of the right cheek; $48,000 was awarded for loss of future earnings. These sums were awarded together and each was slightly lower than otherwise assessed in isolation;

(3) special damages at $200.00 were agreed and awarded to the 2nd plaintiff;

(4) costs to be paid by the defendant.

CIVIL SUIT.

Mohamed bin Abdullah for the plaintiffs.
Chris Chng for the defendant.

Cur. Adv. Vult.

Thean J.: The 1st Plaintiff, an infant, is bringing this action by his mother, the 2nd Plaintiff, for damages for personal injuries sustained by him as a result of a road traffic accident on West Coast Road, Singapore on August 4, 1979. At that time the Plaintiffs were staying, and are still staying, at Apartment Block 512, West Coast Drive. On that day, at about 12.00 o'clock noon the 1st Plaintiff, then 9 years old, was asked by the 2nd Plaintiff to go to the shops on the opposite side of West Coast Road to buy some things. Accordingly, he walked along to West Coast Road and at a point near the bus-stop he proceeded to cross the road and while doing so was knocked down by a motor-car driven by the Defendant from the direction of Jurong towards Pasir Panjang Road. The stretch of road where the accident occurred is straight and is a dual carriageway but is rather narrow with a white line in the middle. At the time of the accident it was drizzling, and the road was wet.

The 1st Plaintiff said that before he crossed the road he stopped at the side of the road and looked towards the right. He saw the Defendant's car at some distance away – the distance he estimated was roughly about 35 feet – and then crossed the road presumably thinking that it was safe to do so. He was knocked down by the car near the centre of the road. The Defendant said he was driving the car at a speed of about 35 m.p.h. and following a truck which was about 9 car lengths ahead. He did not see the 1st Plaintiff at the left side of the road and the first time he saw the 1st Plaintiff was when the latter was knocked down by his car. After the collision the car stopped a few metres away, and realizing that it might be obstructing traffic he drove his car forward to the left side of the road. There was a passenger in the car sitting next to the Defendant. But his evidence does not throw any light on how the accident occurred. He also said that he did not see the 1st Plaintiff before the accident and the first time he saw the 1st Plaintiff was at the time of impact.

I find the Defendant's evidence that he did not see the 1st Plaintiff until the time of the impact very surprising. The stretch of road is straight, and there was at that time nothing on the left side of the road which would obstruct his vision. According to him there was a truck ahead of him but it was 9 car lengths away. A distance of 9 car lengths is at least about 80 to 100 feet. With this distance separating the two cars the Defendant ought to have seen the 1st Plaintiff either at the side of the road or as he was about to cross the road, and if he had, he ought to have slowed down. The Defendant said he was driving at a speed of about 35 m.p.h. That probably was not a fast speed in normal circumstances, though he exceeded the legal limit for traffic along the road. But the road is rather narrow and at that time it was drizzling and the road was wet; there were puddles of water at isolated spots. Traffic on both sides of the road was moderate and there was a truck in front – about 9 car lengths ahead. On the evidence I find that the Defendant was negligent: he was driving his car too fast in the circumstances; he failed to keep a proper look out and failed to see the 1st Plaintiff at the side of the road or just as he was about to cross the road.

It was urged by Mr. Chng on behalf of the Defendant that there was contributory negligence on the part of the 1st Plaintiff: he should have seen the Defendant's car and should not have crossed the road in the face of an oncoming car. I think that the 1st Plaintiff must have seen the Defendant's car, but a boy at the age of 9 years could hardly be expected to judge accurately the speed and distance of an oncoming car. He cannot be expected to exercise the same degree of care or caution as an adult. I do not give much credence to his estimate of the distance of the car away from him when he first saw it before he crossed the road. He estimated roughly a distance of 35 feet; obviously he has no idea of distance. Nor would he have realized that as it was drizzling and the road was wet it would take a longer time for a

car to stop. I therefore find that the 1st Plaintiff was not to blame for the accident.

I now turn to the question of damages. There is no doubt that the 1st Plaintiff had suffered brain damage. After the accident he was admitted to Alexandra Hospital and later transferred to Tan Tock Seng Hospital. He was unconscious for 3 days, and was unable to speak for 1 week. He sustained a fracture of the right maxilla and a laceration of the right cheek. A right periorbital hematoma was noted as well as a swelling over the right maxillary region. He was discharged from hospital on August 29, 1979. He was examined by Dr. Michael H.L. Yap, a neurologist, in August 1981 and his opinion as given in his report dated August 13, 1981 is as follows:

"In view of the history and as it was already 2 years after the accident, I concluded that it was possible that the patient had sustained a very severe post-concussional damage to the brain which may not have been detected on the computer x-ray of the brain but which could be concluded from his lower level of performance compared to previously.

An EEG examination was performed, which showed definite asymmetry in the brain activity i.e. there was beta activity clearly seen over the right frontal region, and poorly seen over the left frontal region where intermittent beta activity occurred. If these EEG changes began since the time of the accident, then this would indicate that the patient still had quite severe brain dysfunction despite the fact that no gross structural changes could be demonstrated on the computer scan x-ray."

At that time he concluded as follows:

"it is difficult to prognosticate how well he would improve in the future as there is such marked individual variability in ability, intelligence and motivation, however, I can state firmly that there is no doubt that he has had severe brain dysfunction due to the head injury."

Dr. Yap also gave evidence and his conclusion was that after a lapse of about 5 years since the accident his improvement, if any, would not be significant.

The 1st Plaintiff was also examined by Dr. Nei I-Ping, a consultant neurologist, who was nominated by the Defendant's solicitors, and his neurological examination revealed defects in memory and in mental arithmetic. His conclusion is this:

"There is no doubt that he had deteriorated in his school performance. The severity of his head injury could be sufficient to explain this deterioration, as there was a significant period of post traumatic stupor of more than 24 hours consistent with severe brain concussion. The absence of abnormality on CT scan does not exclude severe concussion.

Although there is still possibility for improvement this is likely to be minimal in view of the time lapse."

On the basis of the evidence and in view of the nature and extent of injuries suffered by the 1st Plaintiff I award a sum of $38,500 for pain and suffering and loss of amenities, being $35,000 for the permanent brain injury and $3,500 for the fractured maxilla and laceration of the right cheek.

As for the claim for loss of future earnings, that is an area filled with uncertainties. Prior to the accident the 1st Plaintiff was performing satisfactorily in school, but after his accident there was a marked regression in his performance. This is clearly evident from his school report: see Exhibit "P1". He is presently in extended Primary 8. But for the accident and the injuries suffered, he would, in normal circumstances, be in Secondary II. As there is hardly any prospect of his improvement, it is extremely remote that the 1st Plaintiff would be able to complete his secondary education. Tertiary education is completely ruled out in his case. Nor is it likely that he would be able to join any technical school or institution and be trained to acquire any technical skill. When he is 18 years old he will have to join national service, which will take up a period of 2½ to 3 years, and he will only be able to start working at the age of 21 years or thereabouts. The question therefore is at that time what work he will do or will be capable of doing. In view of his limited ability and capability he would not be able to perform any skilled work or assume any responsible position. Dr. Yap said he could cope with simple work and I would expect that at that time it would not be difficult to obtain work of such nature. It is difficult at this moment to forecast what wages or salary he would earn as an unskilled worker at that time and also what he would earn if he were a skilled worker or a professional. On the basis of current trend and standards the disparity between the salary of a skilled worker or a professional and that of an unskilled worker is very substantial. It would however be unfair to take an amount representing such disparity and apply it to a multiplier of 18 to 20 years, which would then result in an astronomical sum. Obviously there are various contingencies which must be taken into account including the possibility that the 1st Plaintiff, even if he had not suffered such injuries, might still not be able to make the grade of a skilled worker or a professional. In the circumstances I have to take a reasonably moderate figure and taking all the factors into account, I consider that

a figure of $200 per month is the appropriate multiplicand and that 20 years is the appropriate multiplier and on the basis of these figures I arrive at a sum of $48,000.

For completeness, I should add that in assessing the said sums of $35,000, $3,500 and $48,000 as general damages for the respective items I have of course taken into account the fact that these sums are awarded together and each is slightly lower than what I would otherwise assess in isolation. There will be judgment for the 1st Plaintiff for the sum of $86,500, being the total amount of general damages. As for special damages to the 2nd Plaintiff, the amount has been agreed at $200 and accordingly, there will be judgment in the said sum for the 2nd Plaintiff. The Defendant will have to pay the costs of this action.

Order accordingly.

Solicitors: *Murphy & Dunbar; W.K. Tan & Co.*

IN RE KIE HOCK SHIPPING (1971) PTE. LTD.

[O.C.J. (Sinnathuray J.) December 28, 1984]
[Singapore – Companies Winding-up No. 56 of 1978]

Company Law – Directors – Duties of directors – Inspectors – Criminal and civil liability – Claim against directors by Liquidator on winding-up – Whether director ought to be excused – Companies Act (Cap. 185), ss. 132, 195, 196, 305 & 354.

In this application made by the Official Receiver, the Liquidator of Kie Hock Shipping (1971) Private Ltd. ("the Company"), the issue is whether the 2nd respondent, the executive director of the Company, has been guilty of misfeasance or breach of duty under section 305 of the Companies Act. The 1st respondent, the managing director of the Company, had earlier admitted liability and was ordered to pay the liquidator the sum of $11,551,000.00 being the total amount of unrecovered debts and interest thereon at 8% p.a. from May 26, 1978 until payment. The Company was wound up on May 26, 1978. On April 19, 1979, the Finance Minister appointed 2 inspectors under sections 195 and 196 of the Companies Act to investigate into the affairs of the Company and criminal proceedings were instituted against both the respondents. There were 6 charges against the 2nd respondent. He pleaded guilty to 5 of them and consented to the 6th charge to be taken into consideration in assessing sentence. Only the 1st charge relating to breach of duty as a director under section 132(1) of the Act is relevant to the present application.

Certain Panamanian Companies were among the affiliated companies which had dealings with the Company. As agents of the Panamanian Companies, all disbursements and advances made by the Company in respect of the Panamanian ships were debited from the accounts of the Panamanian Companies kept by the Company, and all freight earnings and other income of the ships were credited to the same accounts. By 1977 a number of large claims were made against the Company and the debts of the Panamanian Companies were by now about $11,000,000.00. But both the respondents took no action to recover the debts owing to the Company. The 1st respondent was actively disposing of the ships of the Panamanian Companies. The 2nd respondent was aware of this. No proceeds of the disposal were paid to the Company or the Panamanian Companies.

The 2nd respondent contended that his paternal uncle, the 1st respondent, had sole control in the management of the Kie Hock Group of Companies. On the Panamanian Companies owned by his uncle, the 2nd respondent said that not being a director or shareholder, he had no control whatsoever of them. The crux of his case was that throughout his tenure as executive director of the Company, he was totally powerless.

Held: (1) the 2nd respondent cannot be heard to say that he had no power to prevent the breaches of duties by the 1st respondent;

(2) the 2nd respondent as executive director was greatly negligent in the management of the affairs of the Company. His failure to collect the Panamanian debts was the single most important factor that caused the Company to be wound up;

(3) in discharging his duties, a director must act honestly and must exercise such degree of skill and diligence as would amount to the reasonable care which an ordinary man might be expected to take, in the circumstances, on his own behalf. The position in Singapore is that what is required of directors by case law in England is provided by statute in section 132 of the Act;

(4) in the context of this application, every director owes a duty to his company to use reasonable diligence in discharge of his duties. Failure by a director to do so would be a breach of duty of his office. That breach of duty would give rise to an action by the company against the director for damages suffered by the company. The commission of that breach of duty by the director would also be a criminal offence;

(5) having regard to the conduct of the 2nd respondent in the management of the affairs of the Company which led to his conviction, the 2nd respondent should be jointly and severally liable with the 1st respondent. As he had not acted honestly and reasonably in the discharge of his duties as director, he ought not to be excused under sections 354 of the Act.

Cases referred to:

(1) *Re Etic Ltd.* [1928] Ch. 861, 875.
(2) *Re City Equitable Fire Insurance Co.* [1925] Ch. 407, 427.